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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77- 6355

GARNET VINSON,
Petitioner,

v.

RICHMOND POLICE DEPARTMENT, etc., et als,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE
U. S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

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POLICE DEPARTMENT

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES, AND
THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

COMES NOW your petitioner, Garnet Vinson, by his counsel,
George Wm. Warren, IV, and presents his petition for the is-
suanee of a Writ of Certiorari to the United States Court of
Appeals for the Fourth Circuit.

I

OPINIONS BELOW

The decision of the United States Court of Appeals for
the Fourth Circuit which is the subject of the instant proceed-
ing is reported at (267) Fed.2d 263 (4th Cir. 1978). It is repro-
duced herein in toto, beginning at page APP-1.

The order and decree of the United States District Court
for the Eastern District of Virginia (Norfolk Division), which

was the basis for petitioner's appeal to the United States
Court of Appeals for the Fourth Circuit was initially rendered
on September 24, 1976. It was unreported and appears in toto,
beginning at page APP-7.

The petitioner made a timely motion for reconsideration
of this opinion by the District Judge, which motion was denied
by the Court's Memorandum Order of December 9, 1976, which is
also unpublished, and is attached hereto, in toto, beginning at
page APP-9.

II

JURISDICTION

A.

The decision of the United States Court of Appeals for the
Fourth Circuit complained of here was rendered on December 12,
1977.

B.

The jurisdiction of this Court is invoked pursuant to
Title 28, U.S.C. §1253(1).

C.

Pursuant to Rule 33 2.(b) of the Rules of the Supreme
Court of the United States, petitioner states, by counsel, that
no Court of the United States as defined by Title 28 USC
§451 has, pursuant to Title 28, USC §2403, certified to the
Attorney General of the United States the fact that the
constitutionality of any act of Congress has been drawn into
question as a result of this proceeding.

III

QUESTION PRESENTED

WHAT IS THE PROPER LIMITATION STATUTE FOR
§1983 ACTIONS FOR VIOLATIONS OF PROPERTY
RIGHTS?

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IV

AUTHORITIES INVOLVED

The essential authorities upon which this petition relies are the Fifth and Fourteenth Amendments to the Constitution of the United States of America. They are set forth at page App-11.

The following statutes of the United States are also pertinent to this petition: Title 19, USC §185, and Title 42, USC §1983, both reproduced on page APP-12.

Statutes of the Commonwealth of Virginia directly involved in this petition are §8-24 of the 1950 Code of Virginia, as amended, and §64.1-145 of the 1950 Code of Virginia, as amended, both reproduced on page APP-13 of this petition.

V.

STATEMENT OF THE CASE

On June 19, 1974, officers of the Richmond Bureau of Police broke into a private residence, located at 1317 Summit Avenue, in the City of Richmond, Virginia, and seized a substantial quantity of photographic equipment and supplies, valued at more than \$1,500.00.

The search warrant authorizing the entry and seizure of the property was found to be illegal by a judge of the Circuit Court of the City of Richmond, Division I.

Subsequent demands by Petitioner, the owner of the seized property, for its return have been unmet, and it appears the property has been destroyed.

Petitioner is presently, and has been since prior to the institution of the instant suit, an inmate of the Virginia State penal system, incarcerated at Bland Correctional Center.

On June 16, 1976, Petitioner mailed a verified civil complaint, accompanied by an application for leave to proceed in forma pauperis, to the office of the Clerk of the United States District Court for the Eastern District of Virginia (Norfolk Division). The suit was in the nature of an action pursuant to Title 42, USC §1983, and sought equitable relief and damages.

On July 9, 1976, the district judge ordered the complaint filed, and granted Petitioner leave to proceed in forma pauperis, at the same time, directing that an amended complaint be filed, providing considerably more detail. This was accomplished on August 2, 1976.

On September 10, 1976, both Respondents filed motions to dismiss, asserting inter alia, the running of the statute of limitations.

The trial court treated the Respondents' pleadings as motions for summary judgment, and dismissed the complaint for not having been filed within two (2) years of the accrual of the cause of action, ruling the appropriate statute of limitations was Virginia's two (2) year limitation on personal injury actions.

A request for reconsideration was denied, and a notice of appeal timely filed.

VI

REASON FOR ALLOWING THE WRIT

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED BY FAILING TO HOLD THAT THE APPROPRIATE STATUTE OF LIMITATIONS IN §1983 CASES WOULD BE DETERMINED BY THE NATURE OF THE CLAIM PRESENTED.

Among the more important considerations governing a determination by this Court as to whether it should undertake to grant certiorari in a case such as the one at Bar, is whether the decision of the Court of Appeals which is complained of has decided an important question of federal law which has not been, but should be settled by this Court. This is clearly the situation which applies to the instant proceeding.

This Court emphasized early on the sweeping, all encompassing nature of Title 42 USC §1983, and established beyond any possibility of contradiction the requirement that this statute must always be accorded a construction which effectuates its broad humanitarian ends. U.S. v. Price, 383 U.S. 787 (1966).

Preliminarily it must be observed that the United States Congress has never enacted a limitation of actions statute applicable to suits arising under §1983. Almond v. Kent, 459 F.2d 200, 203 (4th Cir. 1972).

When federal statutory rights are involved, for which Congress has failed to provide a limitation period, it is a venerable and longstanding rule that each United States District Court in which such rights are asserted refer to the law of the state where it sits to determine the appropriate statute of limitations. International Union, United Automobile, Aerospace, Agricultural Implement Workers of America (U.A.W.) AFL-CIO v. Hoosier Cardinal Corp., 383 U.S. 696 (1966); McClury v. Silliman, 28 U.S. (3 Pet.) 270, 276-277 (1830).

As the court observed in Abrams v. Carrier Corp., 434 F.2d 1234, 1251 (8th Cir. 1970):

In determining which state limitation period is applicable in the case of a wholly federal right, it is for the federal court to consider the character of the claim involved, and give effect to the nature and purpose of the federal act from which the claim derives and to the federal objectives pursued.

This is a uniquely federal process, as this Court noted in International Union v. Hoosier Cardinal Corp., supra, at p. 706. And "(t)he task is to select the characterization which 'best effectuates the federal policy at issue.' " Vanderboom v. Sexton, 422 F.2d 1233, 1237 (8th Cir. 1970), cert. den., 400 U.S. 852,. Cited in Butler v. Local Union 823, Int. Bro. of Teamsters, Etc., 514 F.2d 442, 446 (1975).

Furthermore the characterization to be placed on a particular cause of action is not immutable, but varies according to the context within which it arises, and the federal policy sought to be effectuated. Butler, supra, p. 448.

It is necessary, then, to turn to the actual selection of an appropriate limitation period for the instant cause of action. This question was considered in the relatively recent case of Almond v. Kent, 459 F.2d 200 (1972). In Almond, supra, the plaintiff brought a Section 1983 suit in the Western District of Virginia, essentially for personal injuries allegedly received at the hands of state officials in the course of his arrest. Citing O'Sullivan v. Felix, 233 U.S. 318 (1914), the Fourth Circuit examined the Code of Virginia for authority as to the appropriate statute of limitations. op.cit., p. 203.

Finding that the Commonwealth had enacted no limitations statute specifically governing Section 1983 actions, the Court held that resort must be had to Virginia's general statute of limitations for personal injury actions, which is set forth in Section 8-24 of the 1950 Code of Virginia, as amended. loc. cit. Suggesting (loc. cit., fn 3) that Virginia might wish to consider the enactment of a specific limitation period for such suits, so long as it did not abridge the constitutional rights asserted, the Almond court went on to declare, in dicta, that,

generally speaking, Section 1983 actions were for personal injuries, and therefore, Virginia's two-year limitation period for personal injury actions would generally govern Section 1983 suits across the board op. cit., p. 204. The Court was careful to distinguish between such actions in general, and actions, such as the one at bar, for the redress of damage to property, for which Virginia prescribes a five-year limitation period. loc. cit.

In the same year as the Almond case, supra, the Fourth Circuit considered the applicability of the same statutory scheme to a Section 1983 action arising out of an alleged housing discrimination incident. In a per curiam opinion, the Court determined that the appropriate Virginia limitation period for this type of wrong is also two years. Allen v. Gifford, 462 F.2d 615 (4th Cir.1972). This is scarcely surprising, for Virginia has long recognized a right of action for tortious interference with contract rights, such as those involved in the sale or rental of real estate. See generally Johnson v. McKee Baking Co., 398 F. Supp. 201 (W.D. Va. 1975); McDonough v. Kellogg, 295 F. Supp. 594 (W.D. Va. 1969).

Subsequent to the decision in Almond, supra, the Virginia General Assembly enacted a one-year limitations statute, specifically for federal civil rights actions. Section 8-24 of the 1950 Code of Virginia, as amended. In a lengthy and well-reasoned opinion, the United States District Court examined this latest statutory development in light of this Court's opinion in Almond, supra, and concluded

. . . that Section 8-24 of the Code of Virginia is unconstitutional because it both burdens the assertion of a federally created right of substantial importance and because it effects an invidious and unwarranted discrimination against assertion of the "constitutional tort."

Van Horn v. Lukhard, 392 F. Supp. 384 (E. D. Va. 1975). In this instance the trial judge was particularly correct in analogizing the plaintiff's cause of action to a tort claim, because the suit arose out of personal injuries received in the course of a brutal, homosexual gang rape to which he had been subjected while in state custody. op. cit., p. 386.

In the case at hand, however, there is no basis for any claim that appellant's cause of action sounds in tort. His suit arises, purely and simply, out of an unconstitutional invasion of his property rights, and the subsequent unlawful withholding, loss and/or destruction of his personal property. (App. 5-6, 16)

Nor is there any need for this Court to be cast adrift upon an uncharted sea of federal common law and constitutional imperatives. Happily, the State of Virginia has specific statutes which apply with particularity to the cause of action in the present case. Section 8-24 of the 1950 Code of Virginia, as amended provides a five-year limitation period for actions for money damages which survive the death of a party, and Section 64.1-145 of the Code specifically provides for such an action " . . . for the taking or carrying away of any goods . . . , or for their waste or destruction.

Moreover, it is emphatically clear that, in a federal action, predicated upon Virginia law, a " . . . right of action for . . . personal injuries is not identical with . . . (a) right of action for damage to . . . property." Barnes v. Sears, Roebuck & Co., 406 F.2d 859, 862 (4th Cir. 1969). Citing Carter v. Hinkle, 189 Va. 1 (1949).

Following the pertinent decisions of this Court and those of the Fourth Circuit, a federal district court has already had occasion to examine the issue mooted in this appeal in considerable depth. In an extensive and well-reasoned

opinion, the court in Coleman v. Kroger Co., 399 F. Supp. 724 (W.D. Va. 1975), discussed the selection and application of limitations to actions in Virginia arising out of alleged violations of the Labor Management Relations Act, 1947, Section 301, 19 U.S.C.A Section 185.

In Coleman, supra, the Court first determined that there was no specific federal or state limitations statute and then analogized the claim presented to it as a survivable tort action for direct injury or deprivation of property rights. op. cit. p. 730. The judge then applied the two Virginia statutes cited supra, and concluded that the five-year limitation period applied, rather than a one or two-year period. loc. cit.

Virginia cases provide ample authority for the proposition that the case presently under consideration fully qualifies for the five year statute of limitations. See generally Carva Food Corp. v. Dawley, 202 Va. 543 (1961). Equally importantly, the imposition of the longer period would be in full accord with the spirit of the federal policy which this Court is charged with effectuating.

VII

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted, and a Writ of Certiorari should issue to the United States Court of Appeals, Fourth Circuit forthwith.

Respectfully,

GARNET VINSON

By Geo. Wm. Warren, IV
George Wm. Warren, IV
Counsel for Petitioner

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Respondent

MEMORANDUM OPPOSING CERTIORARI

Respondent, Richmond Police Department, by counsel, represents to the Court as follows:

1. The above entitled cause was decided by the United States Court of Appeals for the Fourth Circuit and an Opinion was rendered and Judgment docketed and entered on December 12, 1977. A copy of this Opinion has been attached to the Petition. Judge Russell, in his Opinion, found it unnecessary to consider the Statutes of Limitations defense since he found that it was clear on the face of the Complaint that any cause of action against the named defendants was without merit.

2. The sole question raised by the Petition for a Writ of Certiorari is what is the proper limitation statute for a Section 1983 action. Since the case was not decided on this ground, your respondent, Richmond Police Department, contends that there is no justiciable issue for the Court to decide and in the alternative suggests that the cause is moot.

THEREFORE, it appears that the petitioner's application for a Writ of Certiorari should be denied.

Respectfully submitted,

Thomas D. Stokes, III
Thomas D. Stokes, III
Counsel for Respondent,
Richmond Police Department

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Richmond Commonwealth's Attorney

ORIGINAL COPY

in opposition

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Respondent, Richmond Commonwealth's Attorney, by counsel, represents to the Court as follows:

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2. The sole question raised by the Petition for a Writ of Certiorari is what is the proper limitation statute for a Section 1983 action. Since the case was not decided on this ground, your respondent, Richmond Commonwealth's Attorney, contends that there is no justiciable issue for the Court to decide and in the alternative suggests that the cause is moot.

THEREFORE, it appears that the petitioner's application for a Writ of Certiorari should be denied.

Respectfully submitted,

Stacy F. Garrett, III
Stacy F. Garrett, III
Counsel for Respondent,
Richmond Commonwealth's Attorney